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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/786,953	02/25/2004	Allan R. Jones JR.	1-24035	3792

4859 7590 06/14/2005

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EXAMINER

PATEL, MITAL B

ART UNIT	PAPER NUMBER
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3743

DATE MAILED: 06/14/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/786,953

Applicant(s)

JONES ET AL.

Examiner

Mital B. Patel

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 March 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6 and 11 is/are rejected.
- 7) ☒ Claim(s) 7-10 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 17 March 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 6/28/09
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Response to Amendment/Arguments

1. Applicant's arguments, filed 3/17/05, with respect to the rejection(s) of claim(s) 1-6, 8, and 11 under 35 U.S.C. 102(b) have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Toffolon (US 4,971,051).

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1, 4, 5, and 11 are rejected under 35 U.S.C. 102(b) as being anticipated by Toffolon (US 4,971,051).

4. **As to claim 1**, Toffolon teaches a cushion **11** for removably attaching (**See Col. 1, lines 65-68 that discloses mechanical fastening which would allow for removable attachment**) to a nasal mask for forming a seal between the mask and a user's face around the user's nose, said seal including an inflatable chamber (**that formed by 11**) adapted to extend during use between the mask body around at least a portion of a nose receiving opening in the mask body and a mask user's face, a manually operated pump **4** permanently connected to said inflatable chamber, said pump delivering air to said inflatable chamber when actuated, and a normally closed

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manually operated pressure release valve **6** permanently connected to said inflatable chamber, said release valve venting air from said inflatable chamber when manually actuated (**See Col. 2, lines 35-68**).

5. **As to claim 4**, Toffolon teaches a cushion for a nasal mask, wherein said inflatable chamber is shaped to extend continuously around a nose opening when attached to a mask body (**See Fig.1**).

6. **As to claim 5**, Toffolon teaches a nasal mask **1** including a body having a rim **See Fig.1** defining an opening adapted to receive a user's nose, a cushion **11** attached to said rim, said cushion having an inflatable chamber (**that formed by 11**) extending at least partially around said rim, a manually operated pump **4** permanently connected to said inflatable chamber, said pump delivering air to said inflatable chamber when actuated, and a release valve **6** permanently connected to said inflatable chamber, said release valve venting air from said inflatable chamber when manually actuated (**See Col. 2, lines 35-68**).

7. **As to claim 11**, Toffolon teaches a nasal mask including a body **1** having a rim **See Fig.1** defining an opening adapted to receive a user's nose, a cushion assembly **11** removably attached (**See Col. 1, lines 65-68 that discloses mechanical fastening which would allow for removable attachment**) to said body to extend around said rim, and wherein said cushion assembly includes an inflatable chamber (**that formed by 11**), a manually operated pump **4** connected to said inflatable chamber, said pump delivering air to said inflatable chamber when actuated, and a normally closed release

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valve 6 connected to said inflatable chamber, said release valve venting air from said inflatable chamber when manually actuated.

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

10. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

11. Claims 2, 3, and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Toffolon (US 4,971,051) in view of Morgan (US 3,680,556).

12. **As to claims 2 and 6**, Toffolon teaches essentially all of the limitations except for a resilient open cell foam at least partially filling said inflatable chamber. However, Morgan does teach the use of an open cell foam to prevent collapse of the cushion under increased pressure (See Col. 4, lines 15-43 of Morgan). Therefore, it would have been obvious to one of ordinary skill in the art to provide an open cell foam in the inflatable chamber of Toffolon so that the cushion does not collapse under increased pressure.

13. **As to claim 3**, the above combination teaches a cushion wherein said inflatable chamber is shaped to extend continuously around a nose opening when attached to a mask body.

Allowable Subject Matter

14. Claims 7-10 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

15. The following is a statement of reasons for the indication of allowable subject matter: As to claim 7, the prior art of record does not teach nor render obvious the overall claimed combination of a cushion with the pump removably mounted in a pump opening in the body and the pressure release valve removably mounted in the valve opening in the body. As to claim 8, the prior art of record does not teach nor render


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obvious the overall claimed combination of a cushion wherein the pump includes an air inlet connecting through an air inlet check valve to said chamber and an air outlet connected from said chamber through an outlet check valve and a passageway to said inflatable chamber.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mital B. Patel whose telephone number is 571-272-4802. The examiner can normally be reached on Monday-Friday (11:00-7:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Henry Bennett can be reached on 571-272-4791. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

 6/10/05
Mital B. Patel
Examiner
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